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McCOMB et al. v. FARROW et al.

Nov. 18, 1920.

[104 S. E. 813.]

1. Evidence (§ 510*)—Testimony as to Duration of Time Testator Had Suffered from Senile Dementia Held Admissible.—In proceedings to probate will under Code 1904, §§ 2539, 2542, contested on ground of mental incompetency, testimony of insanity expert who examined testator ten months after execution of will that testator at the time of his examination was suffering from senile dementia, and that he had been suffering therefrom for more than ten months or a year, held admissible.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 717.]

2. Evidence (§ 510*)—Testimony as to Testator's Lapse of Memory Held Admissible in Will Contest.—In contest of will on ground that testator at time of execution of will was suffering from senile dementia, testimony of physician of 20 years' experience who had observed cases of senile dementia in his practice that he had had two conversations with testator, and that testator during second conversation had completely forgotten first conversation, held admissible.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 717.]

3. Evidence (§ 501 (3)*)—Witness with Opportunity to Observe Testator's Mental Condition May Testify after Stating Basis of Opinion.—In contest of will on ground of mental incompetency, a non-expert witness who has lived with testator and discussed with testator testator's business matters, with full opportunity to observe the condition of testator's mind, may state his opinion as to the mental condition of the testator after having first stated the facts and circumstances upon which that opinion was based.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 719.]

4. Evidence (§ 474 (4)*)—Nonexpert Familiar with Testator's Business Could Testify as to Mental Incompetency, though Not Living with Testator at Time of Execution of Will.—In contest of will on ground of mental incompetency, testator's nephew, who had lived with testator at different times for a number of years, and who had discussed testator's business affairs with testator, but who had left testator's home in November of one year without returning until November of the following year, could testify as to testator's mental competency, though will was executed in May during such absence.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 719.]

5. Wills (§ 384*)—Admission of Testimony Held Harmless in View of Other Testimony.—In contest of will on ground of mental incompetency, in which testator was claimed to have been suffering

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

from senile dementia at time of execution of will, testimony of testator's nephew, who had lived with testator, and with whom testator had discussed his business matters, that testator would probably have told him of the execution of will, held harmless, if error, in view of great weight of other testimony as to testator's incapacity.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 719.]

6. Trial (§ 413*)—Objection to Cross-Examination Waived by Asking Same Question on Re-Examination.—Objection to cross-examination was waived by asking substantially the same question of the witness on his re-examination in chief.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 956, et seq.]

7. Wills (§ 384*)—Cross-Examination as to Mental Incompetency Held Harmless.—In contest of will on ground of mental incompetency, admission of testimony on cross-examination of witness who had testified to business transactions of testator prior to execution of will that in his opinion, founded on what witness knew and observed of testator prior to date of will, and also as to what he knew and observed subsequent thereto and up to time of testator's death, held harmless.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 715.]

8. Wills (§ 324 (2)*)—Mental Competency of Testator Held for Jury.—Whether testator, claimed to have been suffering from senile dementia at time of execution of will, was of sound and disposing mind at time of execution, held for jury.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 777.]

9. Wills (§ 386*)—Verdict on Conflicting Evidence as to Competency Conclusive.—Where conflicting evidence made the question of testator's mental competency at time of execution of will a jury question, and where jury was properly instructed, neither trial court nor appellate court could interfere with jury's verdict.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 777.]

Error to Circuit Court, Augusta County.

Proceedings for probate of will of Reeves McComb, by McComb and others against Farrow and others. Order disallowing will offered for probate and ordering probate of other will, and proponents of former will bring error. Affirmed.

J. M. Perry, of Staunton, for plaintiffs in error.

Timberlake & Nelson, Curry & Curry, Kerr & Crosby, and *Jos. A. Glasgow*, all of Staunton, for defendants in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.